SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1951**

---

# No. 474

---

MARION W. STEMBRIDGE,

*Petitioner,*

*v.*

THE STATE OF GEORGIA,

*Respondent*

---

**ETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA AND TO THE SUPREME COURT OF GEORGIA**

---

MARION W. STEMBRIDGE,
*Pro se.*

# INDEX

## Subject Index



## Table of Cases Cited



## Statutes Cited

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1951**

---

# No. 474

---

MARION W. STEMBRIDGE,

*Petitioner,*

*v.*

THE STATE OF GEORGIA,

*Respondent*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA AND TO THE SUPREME COURT OF GEORGIA

---

Marion W. Stembridge, petitioner, prays that a writ of certiorari issue to review the judgments of the Court of Appeals of Georgia entered in the above case on July 17, 1951, and of the Supreme Court of Georgia, entered in the above case on September 12, 1951.

### Opinions Below

The opinion of the Court of Appeals of Georgia is shown at R. 199-202.

The Supreme Court of Georgia wrote no opinion in denying certiorari (R. 225).

## Jurisdiction

The judgment of the Supreme Court of Georgia was entered September 12, 1951 (R. 225).

The jurisdiction of this court is invoked under Title 28 U. S. C. Sec. 1257(3).

Federal Question 1 (R. 208) was first raised in the Court of Appeals of Georgia by allegation that the placing in this case of evidence known to be perjury, seeks to deprive petitioner of liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. This Federal Question was considered and decided adversely to petitioner.

Federal Question 2 (R. 217 par. 10 and R. 218 par. 4) was first raised before the Supreme Court of Georgia by alleging that the Court of Appeals of Georgia, in arbitrarily and improperly deciding petitioner's Bill of Exceptions in violation of every applicable law, statutory or decision, and different from the decision that had been rendered by this Court of Appeals to all others in like circumstances, had violated petitioner's rights under the equal protection of the laws clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States.

This Federal Question was decided adversely to petitioner. If petitioner's claim had been decided in petitioner's favor, it would have required that the Supreme Court of Georgia grant certiorari and reverse the judgment of the Court of Appeals.

Federal Question 3 (R. 219 par. 3) was first raised before the Supreme Court of Georgia by alleging that the Court of Appeals of Georgia, in setting up a misrepresentative and deceptive statement of facts in petitioner's case and then deciding petitioner's case on the basis of the misrepresentative and deceptive statement of facts so set up, had violated petitioner's rights under the due process clause and the

equal protection of the law clause of the Fourteenth Amendment to the Constitution of the United States. This question was decided adversely to petitioner. If petitioner's claim had been decided in petitioner's favor, it would have required that the Supreme Court of Georgia grant certiorari and reverse the judgment of the Court of Appeals.

The Court of Appeals of Georgia is the highest court of the State in which a decision could be had, unless the Supreme Court of Georgia had granted certiorari.

## Questions Presented

Federal Question 1. Whether the procuring of a criminal conviction (that could not have been obtained otherwise) by suppressing and withholding evidence that would have resulted in a verdict of not guilty and by the use of testimony known at the time to be perjury, is a violation of the due process clause of the Fourteenth Amendment to the Constitution.

Federal Question 2. Whether the arbitrary and improper deciding of a case by an Appellate court in violation of every applicable law, statutory or decision, and different from the decision that had been rendered to all others in similar circumstances, is a violation of the equal protection of the laws clause and the due process clause of the Fourteenth Amendment to the Constitution.

Federal Question 3. Whether the setting up by an Appellate Court of a misrepresentative and deceptive statement of facts in a case and then deciding the case on the basis of the misrepresentative and deceptive statement of facts so set up, is a violation of the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution.

## Statutes Involved

The pertinent statute is short and is printed below:

> Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. C., Const. Amend. 14, Sec. 1.

## Statement

Petitioner was convicted of voluntary manslaughter on the perjured testimony of Mary Jane Harrison, the State's main witness, that petitioner had followed Emma Johnekins back into the *third* room of an apartment and had there shot her while she was sitting on a trunk (par. 4 of affidavits of each of ten trial jurors R. 185-197). Except for this perjured testimony of the State's main witness that petitioner had followed Emma Johnekins back into the *third* room of an apartment and there shot her while she was sitting on a trunk, petitioner would have been found not guilty. (Par. 4 of affidavits of each of ten trial jurors R. 185-197). Petitioner had, from the beginning, stated that all action took place in the *first* room of the apartment and that he had never gone out of the *first* room of the apartment. Petitioner was sentenced to one to three years in the penitentiary.

During the trial, petitioner learned that Mary Jane Harrison, the State's main witness, had given to a State's investigator a sworn statement in what she thought was a dying declaration (R. 103). There is no discovery in Georgia Criminal law and petitioner had no basis in Georgia law on which he could demand this dying declaration, but petitioner did nonetheless immediately request (demand) that he be permitted to see this dying declaration—one of the basic truths of the case. (R. 105 par. 7, "If that statement is made, Mr. Jones, I would like very much to have it in court tomorrow where we can get this thing cleared up".)

The State failed and refused to permit petitioner to see this dying declaration and suppressed and withheld from the jury this dying declaration that would have shown petitioner not guilty (par. 4 of affidavits of ten jurors R. 185-197) and that would have made the use of the perjured testimony impossible.

There were five signed copies of this sworn dying declaration and all of these copies were under the control of the State at the time of the trial.

When they were shown this dying declaration of Mary Jane Harrison, the State's main witness, who did not die but who later testified at the trial and on whose testimony petitioner had been convicted (R. 185-197), ten members of the trial jury each made affidavit that petitioner was convicted on the testimony of Mary Jane Harrison that petitioner had followed Emma Johnekins back into the *third* room of the apartment and there shot her, and that if this dying declaration, (given before anyone had had an opportunity to get to Mary Jane Harrison and tell her what to say, and in two separate, distinct, and unrelated places of which dying declaration Mary Jane Harrison states that neither petitioner nor Emma Johnekins had ever left the *first* room of the apartment), had been before them at the time of the trial, they would have found petitioner not guilty (R. 185-197). (The affidavits of the ten trial jurors, in effect, held that if all action took place in the *first* room of the apartment then petitioner was not guilty of anything.)

Petitioner applied for new trial on this newly discovered evidence (dying declaration). By order of the trial judge, all evidence on the hearing on the motion for new trial was by affidavit only (R. 198 par. 2). On the hearing, the only evidence material to the case was the affidavits of the ten jurors (R. 185-197). These affidavits were not denied by the State and the State submitted no evidence whatever in any

attempt to disprove these affidavits. On the hearing, there was no evidence whatever that this newly discovered evidence (dying declaration) would *not* have resulted in different verdict on the *first* trial of the case or that this newly discovered evidence would *not* result in a different verdict on a *new* trial of the case.

The fact that the State had had this dying declaration in its files at the time of the trial, the fact that this dying declaration would have resulted in a verdict of not guilty (Par. 4 of affidavit of each of the trial jury, R. 185-197), the fact that the State had suppressed and withheld this dying declaration from petitioner and from the jury, and the fact that the evidence that convicted petitioner was known at the time to be perjury, was not denied. Not one of these facts has ever been denied.

The trial judge overruled petitioner's motion for new trial (R. 199). Petitioner's bill of exceptions to the Court of Appeals of Georgia was overruled (opinion at R. 199-202) and the Supreme Court of Georgia denied certiorari (R. 225).

## Discussion of the Federal Questions

Federal Question 1. (R. 208) Is the procuring of a conviction in petitioner's case by the suppression and withholding by the State of evidence that would have resulted in a verdict of not guilty (R. 185-197) and by the use of evidence known to be perjury, a violation of the due process clause of the Fourteenth Amendment to the Constitution?

The State had five signed copies of this sworn dying declaration that would have resulted in a verdict of not guilty (R. 185-197) in its files at the time of the trial and not only suppressed and withheld this dying declaration (that would have resulted in a verdict of not guilty, R. 185-197) from the jury but refused petitioner's demand (R. 105 par. 7, "If that statement is made, Mr. Jones, I would like very

much to have it in court tomorrow where we can get this thing cleared up") that petitioner be permitted to see this dying declaration.

For the State to have put this dying declaration in evidence or to have permitted petitioner to see this dying declaration, would have made it impossible for the State to use this perjured testimony on which petitioner was convicted. The act of suppressing and withholding this dying declaration was an essential and integral part of the perjured testimony itself and of the use of this perjured testimony. This dying declaration was the ray of light in the situation brought by the State's main witness before anyone had had an opportunity to get to Mary Jane Harrison and tell her what to say (and this is most important), that would have shown that petitioner's statement from the beginning had been correct, and would have made any attempt to use the perjured testimony absurd.

This dying declaration would have shown (by the eternal fitness of things and by bringing light into a moment that was otherwise obscure) to the jury or to anyone familiar with the case, the parties, the witnesses, and the background, that petitioner was not guilty (R. 185-197) and the State knew this and withheld this dying declaration for that very reason.

The State knew, and could not have failed to know, that to permit the jury or petitioner to see this dying declaration would have resulted in a verdict of not guilty and would have made the use of the perjured testimony impossible, and knowing this the State suppressed and withheld the dying declaration that would have resulted in a verdict of not guilty, and used the perjured testimony instead.

The fact that the State had this dying declaration in its files at the time of the trial, the fact that this dying declaration would have resulted in a verdict of not guilty, the fact

that the State suppressed and withheld this dying declaration from the jury and from petitioner, the fact that the State had knowingly used this perjured testimony: not one of these facts has ever been denied. They cannot be denied.

The only possible answer to Federal Question 1 is: Yes. *Mooney* v. *Holohan*, 294 U. S. 103; *Pyle* v. *Kans.*, 317 U. S. 213.

A conviction obtained in violation of the due process clause or the equal protection of the laws clause of the Fourteenth Amendment to the Constitution, is absolutely and totally void. (And this would be true even tho the defendant was guilty as charged.) *Norris* v. *Ala.*, 294 U. S. 587; *Hill* v. *Texas*, 316 U. S. 400.

. . .

Petitioner is not a lawyer and has had no law training. When the trial judge overruled petitioner's motion for new trial on this newly discovered evidence, petitioner had already spent more than $10,000.00 as attorneys' fees and more than $5,000.00 as court and other costs in trying to defend himself against what he knew to be fraud. And petitioner was faced with the necessity of taking over his own case. The best that petitioner can hope to do is to raise the veil and let this Supreme Court see for itself the violation of petitioner's rights under the Constitution.

Petitioner believes that the suppression of this dying declaration that would have resulted in a verdict of not guilty (R. 185-197) and the knowing use of this perjured testimony, or either of these two items alone, under Federal Question 1 absolutely control his case and that nothing else is necessary. However, petitioner's rights guaranteed by the Constitution have been violated three different times and under two different Federal Questions by the Court of

Appeals of Georgia and petitioner will deal with those below under Federal Question 2 and Federal Question 3.

Federal Question 2. (R. 217 par. 10 and R. 218 par. 4). Is the arbitrary and improper deciding of petitioner's case by the Court of Appeals of Georgia in violation of every law, statutory and decision, and different from the decisions of this Court of Appeals of Georgia in similar circumstances on every other case ever decided by this Court of Appeals, a violation of the equal protection of the laws clause and of the due process clause of the Fourteenth Amendment to the Constitution of the United States?

The applicable laws of Georgia necessary in testing this violation of petitioner's rights, cover two points: where the newly discovered evidence would have resulted in a different verdict on *first* trial, and where the newly discovered evidence *would* result in different verdict on *new* trial. Actually these two points are precisely equivalent—a jury is supposed to always give the same verdict on the same law and evidence, whether on the first trial, the second trial, or any other trial.

The statutory law on this is Georgia Code, Section 70-204. "NEWLY-DISCOVERED EVIDENCE.—A new trial may be granted in all cases when any material evidence, not merely cumulative or impeaching in its character, but relating to new and material facts shall be discovered by the applicant after the rendition of a verdict against him, and shall be brought to the notice of the court within the time allowed by law for entertaining a motion for new trial." (Under Georgia Code, Section 102-103 "may" in above usage means "shall" or "must".) On compliance with this code section, new trial is not only a right founded in justice, but it is an absolute legal right.

This Code section does not mention "different result" on *first* trial or on *new* trial but all Appellate courts, all justice, and all common sense, hold that if the newly discovered evidence *would have* resulted in different verdict on the first trial (or *would* result in different verdict on new trial), the newly discovered evidence would *certainly* be material.

Every decision, not one exception, of the Supreme Court of Georgia (by which the Court of Appeals of Georgia is bound under the Constitution of Georgia, Code Section 2-3708, "The decisions of the Supreme Court shall bind the Court of Appeals as precedents,") not *one* exception (and including specifically *Mann* v. *State*, 34 Ga. 1; *Mills* v. *May*, 42 Ga. 623; *Widener* v. *State*, 54 Ga. 312; *Long* v. *State*, 54 Ga. 564; *Thompson* v. *State*, 60 Ga. 619; *Gregory* v. *Harrell*, 88 Ga. 170; *Cooper* v. *State*, 91 Ga. 363; *Stephens* v. *State*, 99 Ga. 200; *Carr* v. *State*, 106 Ga. 737;) and every other decision of this Court of Appeals of Georgia, not one exception, (including specifically *Moore* v. *State*, 11 Ga. App. 259; *Fehn* v. *State*, 11 Ga. App. 329; *Deason* v. *State*, 11 Ga. App. 759; *Nolan* v. *State*, 14 Ga. App. 824; *Paden* v. *State*, 17 Ga. App. 113; *Carson* v. *State*, 20 Ga. App. 82; *Todd* v. *Jackson*, 24 Ga. App. 519; *Harper* v. *State*, 50 Ga. App. 298; *McDaniel* v. *State*, 74 Ga. App. 5), has held that if the newly discovered evidence would have produced a *different* result (verdict) on the first trial and the other technical requirement of the law as to diligence, etc. are met, then new trial should be granted. Different result on first trial is an absolutely controlling point.

The Court of Appeals of Georgia held that all other requirements of law for new trial were met by petitioner (R. 200-201).

Paragraph 4 of the affidavits of each of the ten jurors (R. 185-197) showed unequivocally that if this newly discovered evidence had been before them on the first trial,

they would have given a different result. These affidavits were not challenged or questioned and must be accepted as true.

Here we have absolute, total, mathematical, compliance with the requirements of law for new trial. Ten members of the trial jury swore that the newly discovered evidence would have produced different result on *first* trial. Every decision of the Court of Appeals in every other case ever decided by it on similar circumstances granted new trial. The Court of Appeals refused new trial in petitioner's case—different treatment.

Different treatment, treatment different from the treatment awarded to others in like circumstances, is the test of the equal protection of the laws under the Fourteenth Amendment.

The Court of Appeals of Georgia violated petitioner's rights guaranteed by the equal protection of the laws and the due process clauses of the Fourteenth Amendment to the Constitution of the United States, and this Supreme Court should reverse petitioner's case on this ground alone even if there were no other violation of petitioner's rights under the Constitution in petitioner's case.

Federal Question 3. (R. 219 par. 3) Is the setting up by the Court of Appeals of Georgia of a misrepresentative and deceptive statement of facts in petitioner's case and then deciding petitioner's case on the basis of the misrepresentative and deceptive statement of facts so set up, a violation of petitioner's rights guaranteed by the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution?

This goes to the very heart of justice. This violates the basic concepts on which America is founded and the basic concepts of American justice. If an Appellate court (or any other court) may decide a case, not on the facts

of the case at bar, but on the basis of a misrepresentative and deceptive statement of facts set up by the deciding court, then we would have no justice and the rights guaranteed by the Constitution of the United States would have no meaning whatever.

A fact that would have absolutely controlled petitioner's case before the Court of Appeals of Georgia was: Each of the ten trial jurors had sworn that on *new* trial of the case, using the newly discovered evidence, they would give different result. Neither these affidavits nor the statements therein were denied or challenged in any way whatever and they must be accepted as true. For the Court of Appeals to have placed this fact (that ten members of the trial jury had each sworn that on new trial of the case using the newly discovered evidence, they would find petitioner not guilty) in its statement of facts and then properly decided petitioner's case on the then full and correct statement of facts would have absolutely required that petitioner be granted new trial.

Petitioner named, directly or indirectly, this fact, different result on new trial, and the fact that each of the ten jurors had sworn that on new trial using the newly discovered evidence they would give different result, as a controlling fact in his case 22 separate and different times in his first brief, 12 separate and different times in his rebuttal brief, and 10 separate and different times in his motion for rehearing; and in his motion for rehearing petitioner specifically requested that this controlling fact be placed in the Court of Appeals' statement of facts of the case; and yet the Court of Appeals failed and refused to put this controlling fact in its statement of facts and decided petitioner's case on the basis of the materially, and controllingly, incomplete, and therefore misrepresenta-

tive, and deceptive statement of facts set up by the Court of Appeals.

The Court of Appeals of Georgia violated petitioner's rights under the due process clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution and petitioner's case should be reversed by this Supreme Court on this point alone even if there were no other violation of petitioner's rights in petitioner's case.

## Reason for Granting the Writ

Petitioner's rights guaranteed to him by the Constitution of the United States have been violated.

All other courts have turned down petitioner's claim for relief.

Besides this Supreme Court, the only possible relief would be energy, time, and money, consuming habeas corpus.

Habeas corpus before the State courts, with the State Supreme Court and the State Court of Appeals still holding that *Burke* v. *State*, 205 Ga. 656, controls petitioner's case two years after this Supreme Court of the United States directed Burke in this same case, *Burke* v. *Ga.*, 338 U. S. 941 to overlook the State Courts and go direct to the Federal District Court, would be futile and a total waste of time and money. (Petitioner's case is distinguished from the *Burke* case in this: In the *Burke* case charge of the knowing use of perjured testimony was immediately and vigorously denied, while in petitioner's case this charge has never been denied. Too, the *Burke* case did not involve the suppression and withholding of evidence that would have shown defendant not guilty.) After a year or two more of effort, expense, and trial, appeals, applications for certiorari, etc., this case would inevitably be before this Supreme Court of the United States again.

But even if this Supreme Court should direct petitioner to overlook the State Courts in habeas corpus, there is in petitioner's case, by now, another overwhelming factor. Petitioner has already spent more than $15,000.00 in attorneys' fees and costs in his case in trying to defend himself against this fraud. Surely, there should be a limit somewhere to what a citizen of the United States is required to do to protect himself against violations of his rights guaranteed to him by the Constitution.

In all conscience, this limit has long ago been passed in petitioner's case; and petitioner respectfully submits that this Supreme Court of the United States should grant him certiorari and void the judgment of the trial court below.

## Conclusion

For the foregoing reasons, this petition for the writ of certiorari should be granted.

Respectfully submitted,

MARION W. STEMBRIDGE,
*Pro se.*

(8760)